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REGION III MANUAL

REGIONAL PROCEDURE 0517A

MANAGEMENT OF ALLEGATIONS

A. Scope

This document prescribes the regional procedures and policy for the implementation of the NRC allegation management policy in accordance with NRC Management Directive (MD) 8.8, "Management of Allegations." Users of this procedure shall familiarize themselves with MD 8.8.

B. References

NRC Management Directive 7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals"  
NRC Manual Chapter 1007, "Interfacing Activities Between Regional Offices of NRC and OSHA"  
Regional Procedure 0518, "Handling Fitness for Duty Matters"  
Regional Procedure 1007A, "Interface Activities Between Regional Office and OSHA"  
Regional Procedure 1215, "Handling Office of Investigation Reports and Information"  
Regional Procedure 1460, "Working Arrangements for Implementing the Memorandum of Understanding with the Department of Labor"

C. Specific Responsibility

1. Enforcement and Investigation Coordination Staff (EICS)

Enforcement Officer

- a. Provides oversight to ensure the proper implementation of this procedure and MD 8.8 for the Regional Administrator.
- b. Serves as an *ad hoc* member of the Allegation Review Board (ARB).

Office Allegation Coordinator

- a. Serves as a member of the ARB.
- b. Serves as the focal point for processing and control of all allegations received in Region III. Is responsible for the handling of allegations from initial receipt to final resolution. Coordinates with the RAO secretary the establishment and maintenance of allegation files that clearly identify allegations received by the Region. Documents all actions initiated to resolve such matters. Ensures that management and cognizant staff are informed of allegations, and kept current on the status of allegations.

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Enforcement Officer

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- c. Provides leadership and assistance to the staff during the receipt, documentation and review of allegation information. Prepares the allegation action plan, with assistance from the technical divisions, if needed, describing the necessary actions to resolve alleged issues. Prepares initial, status, and closure letters.
- d. Conducts annual training for Region III staff having involvement in the receipt or resolution of allegations.
- e. Is available to the Division Directors to provide advice on allegation closeout or to perform an independent review of the Division's closeout of allegations.
- f. Interfaces with the Office of Investigations to keep abreast of the status of wrongdoing investigations. All requests for assistance from the Office of Investigations will be coordinated through the OAC or the Enforcement Officer.
- g. Is the principal interface between Region III and Department of Labor.
- h. Is the principal interface between Region III and the OACs of NRR, NMSS and other regions.

2. Division Responsibilities (DRP, DRS, DNMS)

Assists the OAC in the evaluation of allegation information provided by the allogger during development of an Allegation Action Plan. Responsible for the inspection of assigned allegations. Provides allegation status concerning inspection progress when requested. The Division will provide a Senior Executive Service (SES) member who serves as ARB Chairman. DNMS will chair materials allegations, and DRS or DRP will chair reactor allegations<sup>1</sup>.

3. Branch Chiefs

Serve as members of the ARB for allegations assigned to their respective branches, and as requested. Additionally, the Safeguards Branch Chief serves as a member of the ARB for all allegations dealing with "fitness for duty," regardless of the facility involved. (Also see Regional Procedure 0518, "Handling Fitness for Duty Matters.")

4. Regional Counsel

Serves as a member of the ARB for all issues involving wrongdoing and when requested by the Chairman.

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<sup>1</sup> It is anticipated that DRS will chair the majority of the reactor allegation review boards, given that the majority of the reactor allegations will be assigned to DRS.

5. Director, Office of Investigations

Serves as a member of the ARB for all issues involving wrongdoing and when requested by the Chairman.

6. Allegation Review Board

Provides guidance and direction for allegations by:

- a. Reviewing the information provided with the allegation action plan to ensure there is a common understanding of the allegation, and general agreement in the proposed course of action before the ARB. The Board may endorse or reject an action plan in total or may endorse it with modifications.
- b. Establishing the safety significance and priority for allegation followup in accordance with M.D. 8.8 and this procedure.
- c. Determining if the allegation should be sent to a licensee using the guidance of Appendix A.
- d. Determining the priority and safety significance of wrongdoing allegations accepted by the Office of Investigations.

Membership

SES member (DRP/DRS or DNMS (Chairman), Respective Branch Chief or delegate, Regional Counsel (as requested by Chairman), OI (as requested by Chairman), OAC, and the inspector receiving the allegation, as required. Other participants may be in attendance as requested by ARB Chairman.

Quorum: At least three members, including the Chairman, and the Branch Chief in the Division responsible for the allegation and an OAC.

7. Assigned Technical Staff

Is responsible for assisting the OAC in evaluating information provided by the allegor. Assist the OAC in proposing actions during the development of an allegation action plan (see Appendix B). Implements assigned allegation action plans. Provides documentation to allow for allegation closure. This includes:

- a. Establishing an inspection schedule for the resolution of assigned allegations which is consistent with the guidance in Appendix A.
- b. Assisting the OAC in the evaluation of all incoming allegations and the preparation of an allegation action plan. The technical staff member who is designated as point of contact for that particular allegation should also be in attendance at all ARBs.

- c. Notifying the OAC when inspection status changes or action(s) is/are complete, providing copies of all documentation to the OAC for case file maintenance and closure, and assisting the OAC in maintaining status of allegations.

D. General Guidance and Information

Allegation: A declaration, statement or assertion of impropriety or inadequacy associated with NRC-regulated activities, the validity of which has not been established. This term includes all concerns identified by sources such as individuals or organizations, and technical audit efforts from Federal, State or local government offices regarding activities at a licensee's site. Excluded from this definition are inadequacies provided to NRC staff by licensee managers acting in their official capacity, matters being handled by more formal processes such as 10 CFR 2.206 petitions, misconduct by NRC employees or NRC contractors; non-radiological occupational health and safety issues; and matters involving law enforcement and other Government agencies.

Confidentiality: Confidentiality can be offered only by an NRC employee authorized to grant it. The authority to sign and issue confidentiality agreements resides with the Regional Administrator. This authority may be redelegated. If at any time, for any reason, confidentiality is breached or jeopardized, the Regional Administrator should be informed and the alleged should be advised, the reason explained and remedial measures taken, if possible, to reduce the impact of disclosure. Any requests for delegated authority should be coordinated through the OAC.

Confidentiality is not to be granted as a routine matter, rather confidentiality should be granted only when necessary to acquire information in the best interest of the agency. It may be offered to those allegeders who by their actions would not readily make the desired information available or where there are other circumstances that might warrant it. The offer of a confidentiality agreement should be contingent upon an assessment of the usefulness of the information provided if such a determination can be made in a timely manner. For the majority of individuals, confidentiality need not be provided.

As a general rule, however, the "need to know" principle should be implemented where the identity of any allegeder is concerned. For those allegeders with a confidentiality agreement this means that the identity of the source must be protected by not referring to the same or other identifying information in discussions unless absolutely necessary and by expurgating the name and other identifying information from documents before disseminating these to the staff. For those allegeders without a confidentiality agreement, this means avoidance of unnecessary use of the identity of the source and other identifying information in discussions and in documents. It must be made clear to all concerned if, and on what terms, the anonymity of a person making an allegation is to be protected. A clear record should be maintained for the files to preclude later misunderstanding. Allegation files containing the identity of allegeders must be protected to prevent the identity of allegeders from being disclosed.

Responding to Allegers: Individuals who provide allegations to the NRC must be treated with respect, consideration, and tact. Under no circumstances should they be dealt with brusquely or abusively. The allexer should be promptly advised of the results of followup action. In those instances where there is an unusual delay in providing the results, the allexer should be advised of the status, consistent with MD 8.8, so there is an awareness that the allegations are being pursued.

Timeliness of Resolving Allegations: Allegations having relatively high safety significance should be addressed expeditiously. Less significant allegations should be addressed as priorities and resources permit, but usually within six months of receipt. See Appendix A for additional guidance.

Involvement of Licensees or Other Affected Organizations: For allegations involving a potentially significant and immediate impact on the public health and safety, the affected organization should be promptly informed to assure proper and timely action. For other allegations, if it is deemed appropriate by the ARB, the licensee should be advised specifically by letter of the area of concern and requested to address it, subject to further audit by NRC. See Appendix A for further guidance.

NOTE: 10 CFR 19.16(a), requests by workers for inspections, regarding radiological working conditions, requires the request for inspection be made in writing and provided to the licensee no later than at the time of inspection. In addition to expurgating names and other identifying information, a handwritten request for inspection should be retyped in order to not identify the requester by recognition of his writing. In the event the potential for wrongdoing is involved, OI should be requested to perform an investigation in which the licensee would not be informed.

Late Filed Allegations: See NRC MD 8.8. Part II (E)

## E. Procedure

### 1. Receipt of an Allegation

#### 1.1. Allegations Received by Telephone

Any NRC employee who is contacted by an individual who is making an allegation should evaluate whether or not the allexer can be referred to the allegation coordinator. If the allexer does not want to be referred, the NRC employee should obtain as much information as possible from the individual (see Item 1.3, below). During the discussion, the allexer should be informed that he will be contacted, if possible, by the OAC to confirm the details of the allegation. In the event an allexer provides information which may be safeguards or classified information, the allexer should be advised that he/she will be contacted to arrange a personal interview. Exceptions apply if the information involves an immediate health and safety matter.



Consistent with MD 8.8, disclosure of alleged identity, alleged should be informed by telephone and letter, of the degree to which their identity can be protected. This is necessary since some alleged may incorrectly assume that the NRC can or will protect their identity under all circumstances. Therefore, individuals to whom the NRC has not granted confidentiality should be informed that the NRC intends to take all reasonable efforts not to disclose their identity and of the circumstances under which their identity may be revealed (see MD 8.8, Part 1(A)(2)). The information contained in Attachment 3 should be provided verbatim after obtaining as much information as possible. If at any time it becomes necessary to release the identity of an alleged, with the exception of Harassment and Intimidation (H&I) or wrongdoing investigations the regional administrator/Deputy regional administrator will be consulted. Reasonable efforts will be made to contact the alleged and explain the need for disclosure unless it is documented in the AMS file that the alleged has clearly indicated no objection to being identified.

Individuals wanting to report safety concerns or violations of NRC requirements can contact the RIII Office Allegation Coordinator by calling 1-800-695-7403 as shown on NRC Form 3, Notice to Employees.

Off-hours allegation calls are forwarded to the Headquarters Duty Officer, Operations Center, or to the Regional Duty Officer. The information should be given to the OAC the next working day.

#### 1.2. Allegations Received by Personal Visit

If an individual appears in person at the Regional Office and wants to make an allegation the alleged should be referred to the OAC.

#### 1.3. Discussions with Alleged

Any employee contacted by an alleged should attempt to refer the alleged to the allegation coordinator. If referral is not possible, then the employee should obtain the following essential information as identified in Exhibit 2 (this exhibit is intended as a guide for any individual receiving an allegation):

- a. Full name
- b. Home mailing address
- c. Telephone number where the individual may be contacted (both home and work)
- d. Position or relationship to facility or activity involved
- e. Nature of allegation (who, what, when, where, why, how)

If the alleged declines to provide the above information, attempt to establish the reason(s) using the following

guidance: Inform the individual that Public Law 95-601 affords protection to the alleged by prohibiting an employer from discriminating against an employee for contacting the NRC. If the individual says that they will provide the information if their name is kept confidential, inform the person that it is NRC policy to protect individual identities when possible whether confidentiality is granted or not. However, if the person wants a confidentiality agreement, it will have to be coordinated through the Regional Office. Appendix C of this procedure provides further information regarding protection of an alleged's identity.

The alleged should be informed that the NRC employee with whom he/she is in contact with cannot at the time evaluate the information, determine follow-up action, or establish NRC jurisdiction; therefore, it will be necessary that someone else contact the alleged for additional information.

The alleged may be informed also, that unless an objection is registered he/she will receive written notification within 30 days regarding the allegation, at an address designated by the alleged, which will also acknowledge the receipt of the allegation. This process will permit the alleged an opportunity to review the information and provide some assurance that the information has been correctly translated by the NRC.

If the alleged persists in not offering identification after the above explanations, document the allegation in as much detail as possible and advise the alleged that he/she may contact the OAC in 30 days or any other agreed upon period, for information on the status of any actions being taken on the information supplied.

For allegations of discrimination that fall under Section 211, "Employee Protection," of the Energy Reorganization Act, advise the alleged that the complaint must be filed with the Department of Labor within 180 days of the occurrence of the discrimination event to assure personal employee rights are protected and that the NRC will look into any safety concerns identified by the alleged. (Also see Regional Procedure 1460, "Working Arrangements for Implementing the Memorandum of Understanding with the Department of Labor.")

#### 1.4. Allegations Received by Mail

All correspondence that appears to contain allegation material, including internal NRC memoranda addressing allegations, should be forwarded promptly to the OAC for handling and coordination. To avoid the distribution of material that may tend to identify individuals as alleged, the complete contents of such correspondence and the envelopes should be forwarded to the OAC. No copies should be made.

## 2. Incoming Documentation of the Allegation

- 2.1. The OAC or, if necessary, the employee receiving the allegation shall document the information. If received by an NRC employee, the information should be documented in a memorandum or allegation receipt report to the OAC through their supervisor within three working days. If the alleged's name and other identifying information is included, only one copy of the memorandum with the identifying information shall be made and sent to the OAC. The information on any other copies should be redacted. This will help control the identity of the alleged and minimize inadvertent disclosure.
- 2.2. Upon receipt of the allegations, the OAC review and forward the allegation documentation to the RAO secretary. The RAO secretary shall enter the available information into the Allegations Management System (AMS) and establish an allegation case file.
- 2.3. The OAC, with assistance from the appropriate technical division, if necessary, will prepare the Allegation Action Plan.
- 2.4. The secretary will provide copies of the allegations to the cognizant division, and OI Regional Field Office, if necessary (with the alleged's identity concealed).
- 2.5. All documents containing the identity of the alleged, other than publicly available information, will be handled as NOT FOR PUBLIC DISCLOSURE.

## 3. Assignment of Followup Action and Initial Evaluation

- 3.1. The OAC will coordinate the assignment of the cognizant division with the technical staff. The assigned division will assign an appropriate contact for the allegation (normally the branch chief) who will assist the OAC, as needed, in the evaluation of all of the available information, (i.e., safety significance, recommended Licensing Board notification, etc.). The OAC or the assigned division may recommend to the ARB that an allegation not be pursued based on the nature of the information. The division or the OAC will perform the inspection activities described in the ARB approved allegation action plan within the time-frame agreed upon and document inspection findings in a closeout memorandum or inspection report.
- 3.2. The significance and status of open allegations will be considered in every licensing decision, or escalated enforcement action.
- 3.3. As necessary, the OAC will coordinate allegation information with the assigned technical staff and determine whether a valid allegation exists. The OAC (with divisional support,



if necessary) will re-contact the alleged to obtain any additional information. Each conversation with the alleged will be documented in a conversation record or memorandum to be included in the AMS file.

3.4. The OAC, with assistance from the assigned technical staff as necessary, identifies and separates the information involved in an allegation into one of the following categories:

- a. Allegations that involve purely technical matters, such as: inadequacies in procedures, qualifications, or training; inadequate implementation of procedures; or inadequate corrective actions; or overexposure(s) to radiation.
- b. Allegations that involve wrongdoing such as: record falsification; willful or deliberate violations; material false statements; discrimination under Section 211 of the Energy Reorganization Act; or other improper conduct.
- c. Allegations that involve matters outside the jurisdiction of NRC.

3.5. Technical issues (Category 3.4) involving failure to meet requirements have the potential for being willful or deliberate violations. However, in the absence of specific allegations of willfulness or deliberateness, such issues will normally be tracked separately as technical issues and resolved using program resources.

3.6. Due to their potential impact on safety, all matters involving potential wrongdoing will be handled on a priority basis. Potential wrongdoing identified through the Allegation Management System will be promptly brought by the OAC to the attention of the Field Director of the Office of Investigations (OI), and the appropriate Division Director. Potential wrongdoing identified through the inspection process will be promptly raised through the inspectors management chain and to the OAC who will then notify the Field Director of OI. In either case, an ARB should be convened within 30 days of initial receipt of information by the NRC:RIII to discuss acceptance or non-acceptance of the matter by OI. The OI Field Office Director and Regional Counsel will attend the ARB meeting.

Information developed by OI and OI Reports will be processed under Regional Procedure 1215, "Handling Office of Investigation Reports and Information."

3.7. The OAC ensures that individuals with discrimination complaints under Section 211 of the Energy Reorganization Act are properly notified that a complaint must be filed in writing with DOL within 180 days of its occurrence. Complaints should be filed with the Office of the

Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room 53502, 200 Constitution Avenue, N.W., Washington, D.C., 20210 or Regional Field Offices. The OAC also maintains awareness of DOL's investigative intent, and ensures NRC consideration of the need for its own investigation by timely notification to OI. The OAC will take reasonable steps to facilitate DOL's investigation by assisting DOL in obtaining access to licensed facilities through DRP, DNMS, and DRMA. This type of allegation should also be entered into the AMS.

Information developed by DOL or obtained from DOL, which was not made available to the public by DOL, will be processed in accordance with 10 CFR 2.790(a). Examples of the DOL information which is EXEMPT FROM PUBLIC DISCLOSURE are DOL Investigation Reports and Settlement Agreements. Any request for this information under either the Freedom of Information or Privacy Acts must be identified to DOL through the OAC and FOIA Coordinator.

- 3.8. If an allegation covers issues that affect other Regions or Offices or have generic implication, follow-up activities will be coordinated with the affected Offices and a Lead Office will be designated. The OAC will contact the affected Offices which should result in a mutual agreement as to which Office or Region should have the lead. If agreement cannot be reached at the OAC level, then the Deputy Regional Administrators or Office Directors will resolve which Office or Region should take the lead. Agreement will be documented in a memorandum to the Office or Region to which the allegation is transferring.
- 3.9. Allegations regarding suspected improper conduct by NRC employees and NRC contractors will be brought to the attention of the appropriate division for possible referral to the Office of Inspector General (OIG). Allegations of this nature are not entered into the AMS. (Reference: NRC Management Directive 7.4.)
- 3.10. Allegations that fall within the purview of OSHA are to be turned over to the State or OSHA through the Region III State Liaison Officer, and are not to be entered in the AMS. (Reference: NRC Manual Chapter 1007 and MD 8.8).
- 3.11. Whenever the alleged's name and address are known, the OAC will attempt to contact the individual by phone to confirm the information provided. In addition, written confirmation will be provided to acknowledge receipt of the alleged's information and restating the allegation(s) to ensure a mutual understanding of the specific concerns. This should be done within 30 days of receipt of the information by NRC:RIII.
- 3.12. Allegations that involve agreement state matters should be coordinated with the State Programs Officer.

4. Allegation Review Board

- 4.1. The OAC will coordinate with the RAO secretary regarding the scheduling of all ARBs. The OAC will provide the RAO secretary the Action Plans to be discussed and any other pertinent information. Within two work days in advance of the meeting, copies will be made and distributed by the RAO secretary. The RAO secretary will prepare and distribute an agenda prior to the ARB meeting.
- 4.2. An ARB will be convened to review the adequacy of the action plan. The Board may endorse, reject or modify the plan. When, in the judgement of the Board, a number of allegations point to or reinforce indications of a broader problem, the Board should recommend that additional action be taken. The Allegation Action Plan will be marked to indicate the Board's findings and conclusions. The RAO secretary will provide a copy of the signed ARB minutes to all participants with action assigned.

5. Documentation of Allegation Resolution

5.1. NRC Conducted Review

- a. Documentation of allegation resolution can be accomplished in a variety of formats, for example, internal memoranda, inspection reports, investigation reports, technical papers, and SER supplements for multiple allegations have all been used successfully. Allegation closure documentation must address each concern identified on the itemized list of concerns that is maintained in the allegation file. Any documentation should be written in a style that does not belittle or disparage the alleged, or the significance of the concerns identified to the NRC.
- b. If an inspection report is used for the allegation closure, it should be written in a style that does not contain the name of, or material that could be used to identify, the alleged or that the issue was prompted as a result of an allegation. The report should include a summary of the issue, a specific description of what was done to address each element of the allegation(s), a summary of any new issues developed, and the conclusions drawn. It should document in a clear logical fashion the results obtained, and the basis for the conclusions reached. It should address the following points:
- Who - did you talk to  
- told you what
  - What - did you see, smell, taste, feel, do  
- did you verify, check, review, confirm, test, operate

- When - were things closed out, signed off, identified, observed, tested, confirmed, verified, operated  
- did you inspect, observe
  - Where - did you look, test, operate, confirm, verify, observe
  - Why - did you look, test, operate, confirm, verify, observe
  - How - did you look, test, operate, confirm, verify, observe
- c. The division will provide to the OAC a copy of any reports containing allegation or resolution information obtained during allegation followup.
- d. Where contact information has been provided, the OAC will make reasonable attempts to contact the alleged, with technical assistance as necessary, by phone prior to issuance of a closeout letter. For contentious alleged, additional effort will be made to contact the alleged by phone. The OAC will then prepare the closeout letter reflecting the contacts made with the alleged by phone for the appropriate divisional management signature. A copy of the inspection report should also be sent to the alleged, if appropriate. If the issue involves OI matters, only the synopsis of an OI report will be sent.

## 5.2 Review of Licensee Response

When allegations are forwarded to licensees for followup, a limited independent NRC review of the licensee response should be conducted to verify the accuracy of the details. The evaluation should first be made to determine if the licensee conducted an independent review of the issue(s) and compare the response with any known facts. The evaluation should then determine if the licensee's review discussed the appropriate issue(s) as well as comprehensiveness of response. Upon completion of the review a memorandum should be completed synthesizing the licensee's and NRC's conclusions.

- Attachments:
1. Appendix A - Allegation Categorization and Priority Guidance
  2. Appendix B - Action Plan Guidance
  3. Appendix C - Disclosure of Alleged's Identity
  4. Exhibit 1, Allegation Action Plan Boilerplate
  5. Exhibit 2, Allegation Receipt Report
  6. Exhibit 3, Allegation Identification Sheet

ALLEGATION CATEGORIZATION AND PRIORITY GUIDANCE

Each incoming allegation is to be logged and an initial evaluation completed to determine the appropriate followup action and action office. As part of that evaluation, a determination is made by the OAC and assigned division and technical staff as to whether followup action is required and, if so, who should do it and what priority should be attached to the followup.

The following guidance is to be used for those allegations that do not fall under the purview of OI or OIG and is to be used in assignment and priority determination. Each guidance element is discussed and some examples are provided to give insight to the intent.

If an allegation has more than one part, it will probably be necessary to evaluate each part separately.

- I. After initial evaluation and documentation by the Office Allegation Coordinator (OAC) and the cognizant division, no further action other than documentation will be taken for the following types of issues:

- A. Not a NRC area of regulation

Any allegation that does not fall within the purview of NRC regulations. These include allegations that fall under the jurisdiction of other government agencies or internal licensee business not subject to NRC regulations. Part of the initial evaluation and action includes appropriate referral to the proper agency, and notification to the alleged. Exceptions are referrals such as those to the Department of Labor where the NRC still has a followup responsibility once the other agency makes its finding and other areas that the NRC may have a vested interest (drug abuse, threats and other items that may have an indirect effect on safety and adequacy of construction or operations).

Examples include:

- Sale or use of drugs is a police matter, but the NRC has an interest in the possible impact on construction or operation of a licensed activity.
- Written or oral threats are made against a licensee employee outside the work place.
- An individual alleges that a fellow employee stole money from his desk. This should be an internal company or police matter.
- An individual alleges unsafe working conditions that do not affect plant safety. This is a matter to turn over to the



State or OSHA through the Region III State and Government Affairs Officer. (Also see Regional Procedure 1007A, "Interface Activities Between Regional Office and OSHA.")

- An individual alleges that a company took a job action against him because he talked to a NRC inspector about a safety issue. The individual needs to be referred to the Department of Labor, but NRC needs to track the results of DOL findings to determine whether enforcement action is appropriate.

B. Statements having no relationship to facts or are immaterial to the NRC mission

These include allegations that are absurd, frivolous, non-specific, or immaterial to known regulations and scientific facts. The bases for rejecting the allegation will be documented and include a reasonable assessment that the allegation cannot be extrapolated to a safety concern.

Examples include:

- It is alleged that the nuclear facility is causing a drought at particular downwind locations.
- An anonymous call is received. The caller states, "They have lead lined ovens the size of a suitcase, burning people in them, everybody has individual radiation box, low level radiation gives a hot, hot feeling." This call is non-specific and makes no apparent sense and there is no way to clarify it.
- It is alleged that all the pipe welds in a plant are bad, but there are no specific examples or reasons given to support the contention (or the statement is based upon hearsay with no specifics on who and what was said).

C. A statement of fact, but not a violation of regulatory requirements

These include allegations that are very limited in scope or are straightforward which represent a lack of understanding of regulatory requirements by the allegor. The allegation presents a true statement of facts, but no regulatory requirement has been violated. However, care must be exercised that the allegation is fully understood. If after the initial evaluation there is any doubt, further action may be warranted.

Examples include:

- It is alleged that the licensee failed to do security background checks at a construction site. This statement may be true, but there is no current regulatory requirement for this at the construction site.

- It is alleged that one medical facility is transferring isotopes to another and not going through a radiopharmacy. This statement may be true, but the transfer may be authorized by the licenses.

In the above instances, the OAC will review the allegations and identify those allegations which appear simple to resolve without inspection effort or clearly will not be substantiated. After identification of an allegation of that nature, the OAC will discuss the allegation with the cognizant division representative, usually the Branch Chief responsible for the facility. After receiving concurrence on the evaluation from the cognizant division representative, the OAC will write a memorandum to the allegation file on behalf of the Allegation Review Board, documenting the basis for close out of the allegation. That memorandum should be concurred in by the OAC, the cognizant division representative, and the Allegation Review Board Chairman. In addition, a closeout letter will be sent to the alleged.

II. Candidate allegations to be sent to the licensee but subject to review and evaluations by the NRC.

In an effort to conserve NRC resources, allegations should be reviewed to determine if they can be turned over to the licensee.

Any allegations that meet the following tests are candidates to be turned over to a licensee for evaluation and resolution:

- A. A review determines that the release of information will not harm to the alleged or confidential source.
- B. The alleged or confidential source has not voiced objections to the release of the allegation to the licensee.
- C. The licensee's history of dealing with allegations is good demonstrating the ability to effectively investigate, document, and resolve the allegation.
- D. The alleged or confidential source has not already taken this concern to the licensee with unsatisfactory results. If the alleged has, then the concern is within NRC's jurisdiction. If the alleged objects to the referral, the concerns should not normally be referred to the licensee.
- E. Resources are not available to investigate the allegations within the region.

Factors to consider when assessing these tests.

1. Alleged's Identity May Be Revealed

- The size of the group involved. If the alleged is a member of a small working group, it would be easy for the licensee to identify the person.

- The relationship of the alleged to the area of concern. If the alleged is reporting concerns that involved his or her specific work, it may be easy to identify the person.
- Can the allegation be reworded to protect the alleged? Consider paraphrasing the allegation to remove possible identification and still cover the concern.
- Can the allegation be resolved by inspection of only hardware or records? Allegations that can be resolved primarily by review and inspection of hardware or records without reference to the alleged are normally good candidates to be turned over to the licensee.
- The potential consequences to an alleged if the alleged is unnecessarily identified.

2. No Ongoing or Planned Investigation

- Is there a similarity to an ongoing investigation (same area, similar subject, same licensee personnel involved)? A review of ongoing or planned OI investigations should be made to determine whether there is a potential for tipping off the licensee to the investigation. Directing the licensee to the same area, subject, or personnel could make the licensee aware of the problem that could subvert the investigation. These situations should be coordinated with OI before sending an allegation to the licensee.

3. Opportunity for Cover-up

- Allegation was not accepted by OI, but contains possible elements of wrongdoing that could be transferred at a later date. In these situations more facts are needed to determine whether wrongdoing was involved. The allegation should not be considered for turnover to the licensee until more facts are known or until OI has no further interest.
- Opportunity to alter conditions or records. While this is always a potential it becomes a more significant factor the closer you get to having an individual investigate his own work. For example, you would not want to turn an allegation over to a one-man licensee.
- If the allegation is true, what were the possible motivations and could they have an adverse influence on followup by the licensee.

4. Provides an Independent Review

- Is the licensee's staff large enough to provide an independent assessment? To the extent possible, a licensee's review of an allegation should be independent and unbiased. This can be achieved, for example, by having one different group review concerns in other areas (licensee staff reviews a contractor's work).
- Level of management involved? For concerns within a licensee organization, there should be at least two levels of management direction and overview of the allegation followup to minimize a lack of responsiveness and candor.
- Potential perceptions of a lack of independence by the allegor.

III. Allegations normally followed up by the NRC.

A. Immediate Health and Safety issues

Any immediate health and safety issue needs to be brought to the attention of the licensee for prompt corrective action. However, followup action should be done by the NRC.

Whenever an issue is referred to the Office of Investigation, there should be no link to the fact that an investigation is underway when providing information to a licensee about potential safety concerns or to obtain correction of a specific technical issue. However, should the decision be made in consultation with OI to not inform the licensee of a potential safety concern, then the appropriate Division Director will document this decision and reexamine that decision every three months thereafter to assure its continuing validity. Additional policy guidance is given in Exhibit 3.

B. Potential for lack of independent review

When there is a real or perceived potential that an allegation will not get an independent review, it should be followed up by the NRC. These mainly include allegations made against small licensees such as material licenses where the number of employees would make it impossible to get an independent review. However, regardless of size, the situation should be avoided where the only review of an allegation is by the individual or individuals who were the bases for the allegation in the first place.

C. Subjective judgement is a major issue

Allegations that can be judged against fixed standards or requirements are good candidates to be turned over to licensees; however, there are cases where the findings need to be judged

against subjective criteria. These include assessment of such things as intimidation and harassment. When subjective judgement is an issue, the allegation should be handled by the NRC.

D. Limited saving of resources by giving to licensees

If there is little resource saving when compared to the resources required to prepare and followup on allegations delegated to licensee, the allegation should be done inhouse.

These include allegations that are relatively narrow in scope and can be easily integrated into routine inspection. Timing can also be a factor in determining whether it is better to do inhouse versus giving to the licensee.

IV. Factors to be used in establishing priority.

While the NRC goal is to close out most allegations within six months, there are situations when it is necessary to give a higher priority to closeout action. The following are factors to be considered in establishing priority.

A. Health and Safety

These get prompt attention

B. Operating License Decisions

All known outstanding allegations need to be assessed for their impact on operating license decisions.

C. Startup and Continued Operation Decisions

While similar to health and safety issues above, allegations sometimes come out after major repair or modification work during an outage. The full safety significance of the allegation may not be known until followup is completed,

D. Window of Opportunity

The optimum time for allegation followup may be limited by many factors that may require a higher closeout priority. These include such things as availability of the alleged, turnover of licensee personnel, state of construction, or maintenance schedule, implementation of corrective action and effectiveness of potential enforcement action.

E. Scope of Potential Corrective Action if Allegation were Substantiated

This factor applies mostly to reactors under construction or maintenance during an outage and should be considered in setting followup priority if the corrective action could have a major impact on work and schedules.



ACTION PLAN GUIDANCE

When the OAC, with support from the technical division, as necessary, prepares the Allegation Action Plan for the proposed resolution of an allegation, the following guidance should be considered. A standardized format for the action plan has been developed and is available in the listing of Region III Boilerplates (Exhibit 1).

- I. State the allegation exactly the way it will appear in the Inspection Report or other closeout document.
- II. Try to understand the allegation by putting the available information together. What are the details and nature of the concern or problem and is there enough information?
  - The scope of the problem. What does it entail?
  - The locations of the problem. Can the where, what and how many be established?
  - The present status. Is it still going on? Are the people still around?
  - The seriousness of the problem, especially from the alleged's perspective. What priorities need to be established?
  - The reason for the problem. What or who caused the problem? Why did it occur?
  - Background or relationship of the alleged to the concern. What is the confidence factor of the information? Is it first or second hand information? What is needed to corroborate the information?
- III. When appropriate subdivide the allegation into its individual key elements or concerns to facilitate followup. This subdivision or grouping can be by concern, discipline, contractor, plant area, regulatory requirements, work group, those to be done inhouse and those to be transferred to the licensee, or any other logical division to help manage and facilitate followup and close out.
- IV. Addressing each separate concern or grouping by providing a concise written statement of the perceived understanding, potential significance, the potential scope (narrow or broad implications), and other potential issues. If you don't understand the allegation, get help or recontact the alleged if possible.
- V. For each concern or grouping provide a statement on the strategy to be used and information needed to resolve the allegation. Items to consider are:
  - A. Whether the allegation package contains sufficient information for a thorough evaluation. If it does not, identify the additional information that is needed and the plan to get it.

- B. Has the staff previously addressed this issue or is it a part of a broader issue that has or should be addressed. If it does, provide planned or recommended action.
- C. Can the allegation be examined and resolved during a routine, scheduled inspection. If this is not possible, determine the best way to address the issues. Such as doing a special or team inspection, getting a contractor, etc. Should the allegation be handled in a separate inspection?
- D. Whether the identity of the alleged is necessary for a thorough evaluation. Do you need to look at the alleged's work records, need additional information, need to know about the alleged's relationship to the job or allegations, what do you need to know from the alleged if you should happen to run into him or her during the inspection, etc.?
- E. What specific issues are involved in the allegation, and whether the issues can be adequately addressed by a technical inspection?
- F. Whether the allegation has the potential to require escalated enforcement action, licensing board notification or other regulatory action?
- G. Determine the time sensitivity of the allegation, and what immediate actions are necessary. Establish a schedule for resolution if action is retained in the Region. (See Appendix A for guidance)
- H. Notify the NRR Project Manager or NMSS, as appropriate, of the existence of the allegation. And, if the facility is before a licensing board or is pending Commission decision, recommend board notification to the Director, Division of Licensing, NRR.
- I. Determine whether investigative assistance will be needed or if the matter should be referred to OI for them to take the lead.
- J. Identify peripheral issues that could develop, such as applicability to other areas, effect/cause relationships, generic implications, inadequacy of procedures and management control systems, etc.
- K. The planned resources to be assigned to the allegation followup, such as who and how many inspectors or contractors and their discipline.
- L. How the allegations transferred to the licensee will be audited for adequacy of followup.

Disclosure of Allegor's Identity

Allegers should be informed by the individual receiving the allegation of the degree to which their identity can be protected. This is necessary since some allegers may incorrectly assume the NRC can or will protect their identity under all circumstances. Individuals to whom the NRC has not granted confidentiality in accordance with the Commissions's Statement of Policy on Confidentiality should be informed of the following.

In resolving technical issues, the NRC intends to take all reasonable efforts not to disclose your identity unless;

- You clearly indicate that you have no objection to being identified.
- Disclosure is necessary because of an overriding safety issue.
- Disclosure is necessary pursuant to an order of a court or NRC adjudicatory authority or to inform Congress or State or Federal agencies in furtherance of NRC responsibilities under law or public trust.
- Disclosure is necessary in furtherance of a wrongdoing investigation, including an investigation of harassment and intimidation (H&I) allegations.
- Disclosure is necessary to support a hearing on an enforcement matter.
- You have taken actions that are inconsistent with and override the purpose of protecting your identity.

For allegations involving H&I, the NRC will normally disclose your identity during an NRC investigation if you are the victim of the discrimination.

For allegations involving wrongdoing (e.g. allegations involving record falsification, willful or deliberate violation, or other deliberate conduct in violation of NRC regulatory requirements), your identity may be disclosed at the NRC's discretion in order to pursue the investigation.

Information provided under the Freedom of Information Act (FOIA) will, to the extent consistent with that act, be purged of names and other potential identifiers of allegers; however, disclosures may be necessary under this act.

If it is necessary to release your identity for reasons discussed above, we will make reasonable efforts to contact you and explain the need for the disclosure.

Attached Pertinent Documents:

## Date \_\_\_\_\_

## Date \_\_\_\_\_

ALLEGATION/PERIPHERAL ISSUE ACTION PLAN

Each stated concern and NRC identified peripheral issues should be documented on a separate sheet. Each concern must be documented and written with enough detail to allow thorough followup.

       / Concern No.

       / Peripheral Issues

Regulatory Basis:

- I. Action Evaluation: The following method of resolution is recommended (circle):
- A. Send to Licensee Requesting Response in \_\_\_\_ Days\*
  - B. Priority RIII Followup
  - C. Followup During Routine Inspection Within 60 Days
  - D. Refer to OI
  - E. No Action - Outside NRC's Charter (describe basis below)
  - F. No Action - Without Merit (describe basis below)
  - G. Other (specify)
- \* If the proposal is to send to the licensee, the Action Plan should describe the general areas we expect the licensee to address.
- II. Inspector's Actions: The following areas at a minimum will be reviewed during the inspection into the above mentioned concern and/or peripheral issue.
- A. Objective
  - B. Methods
    - 1. Persons to be contacted:
    - 2. Documents and/or activities to be reviewed:
    - 3. Time period to be covered:
    - 4. Locations/specific areas to visit:
    - 5. Other areas (specify):



LIMITED DISTRIBUTIONALLEGATION DATA RECEIPT FORMDate & Time  
Received: \_\_\_\_\_Allegation  
Number: \_\_\_\_\_

(Leave blank)

Allegation received from: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Employed by: \_\_\_\_\_

Job Title: \_\_\_\_\_

Facilities  
Involved: \_\_\_\_\_Alleger's Preference for Method and time for further contact:  
\_\_\_\_\_  
\_\_\_\_\_Details of Allegation: (Ask: Who? What? Where? When? How? Why?)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(attach additional pages, if necessary)

Identify Protection Procedures and Limitations

Inform alleger of the following: An alleger is not considered a confidential source unless a confidentiality agreement has been signed by NRC and the source. NRC will take all reasonable measures to protect the alleger's identity unless the alleger has clearly indicated no objection to being identified, the alleger has taken actions that are inconsistent with and override the purpose of protecting the alleger's identity, or disclosure is necessary because of (1) an overriding safety issue, (2) an order of a court or NRC adjudicatory authority, (3) an enforcement hearing, (4) a need to inform Congress or State or Federal agencies in furtherance of NRC responsibilities under law or public trust, or (5) investigation of a wrongdoing issue, including harassment and intimidation.

DOL rights (if applicable)

If you believe you have been discriminated against for engaging in a protective activity, you may have personal remedies through the U.S. Department of Labor. The complaint must be submitted in writing within 180 days of occurrence of the discriminatory act to ensure that your personal employee rights are protected. The complaint should be filed with your local DOL office or with the Office of the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, NW, Washington, D.C. 20210.

Employee receiving allegation: \_\_\_\_\_

Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Phone: \_\_\_\_\_